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North Dakota Farm Bureau

www.ndfb.org

April 12, 2004

Division of Water Quality North Dakota Department of Health 1200 Missouri Avenue PO Box 5520 Bismarck, ND 58506-5520

SUBJECT: North Dakota Farm Bureau Comments on the Final Draft of North Dakota Technical Standards for Animal Feeding Operations

North Dakota Farm Bureau is pleased to comment on the Final Draft of the North Dakota Technical Standards for Animal Feeding Operations. While the development of standards is necessary to meet permitting requirements for Confined Animal Feeding Operations (CAFOs) and Animal Feeding Operations (AFOs), we are concerned with some of the suggested standards.

The introduction section includes language stating the owner/operator will be required to make corrections to prevent detrimental impacts regardless of whether the approved design manual was followed. We understand the importance of correcting any detrimental problems. Language should be added to ensure that the owner/operator is not considered in violation if the fault is with the design plan and not with implementation of the plan or the Best Management Practices (BMPs) employed. No citations or penalties should be imposed if the owner/operator addresses concerns in a timely manner. Further, language should be included indicating that technical and/or financial assistance is available to the owner/operator to make the necessary corrections. Contact information for the funding agency(ies) should also be provided.

The manual provides the department with the latitude to institute more stringent requirements if appropriate. While the department may view this provision as allowing flexibility, we are concerned that it provides the opportunity to change the rules without any input from those affected. Consistent rules that operators know and understand are necessary to provide an environment in which animal agriculture can thrive, or at least exist. It is inappropriate and an overreach of government to have the latitude to change rules without a hearing process or comment period. Provisions for recourse or appeal by the involved owner/operator must be made a part of the standards.

We encourage further language be added to the first sentence on Page 6 to read: "If appropriate, the department may institute more stringent requirements to protect water quality and air quality on a case-by-case basis. The department shall provide information to the owner/operator describing the problems and suggested corrective measures. The department shall not institute the more stringent requirements until

interested parties have an opportunity to comment on the appropriateness of the requirements." (Additional suggested language in Bold.)

Section 2.4, Application and Permitting Information, on Page 13, the manual indicates that a permit is required of a medium AFO if it is located within ¼ mile of a surface water of the state and that blue line waters may be used to locate surface waters. Most producers do not understand this terminology. We believe named watercourses or bodies of water should be substituted for the blue line waters. This encompasses most, if not all, appreciable waters of the state.

In many cases, BMPs such as buffer areas will filter runoff and prevent contaminants from reaching surface waters even at distances much less than ½ mile. It would be more judicious to consider BMPs when determining the necessity of a permit.

We are encouraged by the language on Page 14 regarding wintering operations. We believe this coincides with the intent of the United States Environmental Protection Agency (EPA) language on the subject.

We disagree with "expanding the production area" of an existing operation as a requirement for submitting an application for a permit under Section 2.5, first paragraph, Item 2(b). A facility may expand the area without changing the number of livestock or affecting any aspect of the environment. We recommend removing 2(b) from this section.

We support the provision to allow the operation to maintain the Nutrient Management Plan (NMP) on site as described in Section 2.6. This provision must apply to all classes of CAFOs and AFOs. We recommend, however, that the five-year review be enacted only when changes have been made to the facility.

We feel the "No Potential to Pollute" criteria needs clarification regarding the definition of "shallow, unconfined, beneficial use aquifer". Parameters used to determine those terms and who makes the determination should be included in the manual.

Section 2.6.2, Item 10 details information that must be kept regarding the Nutrient Management Plan (NMP) including who developed the NMP and the organizational affiliation of that individual. We believe a program should be developed to train and certify an owner/operator to develop a NMP. An owner/operator could then write his/her own NMP and BMP. In those instances, there would be no organizational affiliation necessary. A provision for this scenario should be included wherever this provision is addressed.

We believe the requirement for NMPs for the use and composition of manure is unjustified. Commercial fertilizer applications may be made without any regulation. This places a discriminatory and financial burden on the livestock industry.

We oppose inclusion of the location and size of feed storage areas of the livestock facility as described in Section 3.2.1.1e. Feed is not defined as either manure or a pollutant. Therefore, feed storage areas should not be required in the design plan. Feed storage areas are often moved for convenience and efficiency. We recommend removal of this criterion.

We recommend the removal of Section 3.2.1, Item 2(c) (page 20) as it is already covered in Section 3.2.1, Item 2(g).

The necessary NMP information includes requirements for precautions to be used to prevent manure from exceeding air quality standards. The state odor laws exempt the odor standard during land application. Therefore, Section 3.2.2, Item 14 on page 21 must be removed or changed to reflect the state laws.

We reiterate our belief that NMPs must be kept at the facility and not in department records. This is to provide a level of protection to the owner/operator of their personal records.

Site assessment should include NMPs and BMPs as part of the criteria. Management should be recognized for the vital role it can play in the protection of the environment. Full consideration of the management practices should be implemented in the siting assessment.

The required 270 days manure storage is unwarranted. We strongly encourage 180 days of storage be implemented.

The operation, maintenance, and inspections required of CAFOs are too restrictive. The daily and weekly requirements are not practical and are unenforceable. We recommend changing these provisions to monthly requirements and include provisions for major storm events would be much more workable.

The keeping of NMP records for $C\Delta FOs$ for five years is excessive. Three years would be sufficient, two years would be better.

We feel Section 9.2 is unnecessary. The unplanned release of manure to ground surface is not a violation and should not be treated as such. Anyone employing best management practices will address the issues referenced in this section.

The emergency action plan needs only to address unplanned releases that pose a threat to surface or ground water or poses an immediate danger to human health. Therefore, the action plan should only be required to address those situations.

Thank you for the opportunity to respond to the Final Draft of the North Dakota Technical Standards for Animal Feeding Operations. We trust you will take our concerns under advisement as you move forward with the final document.

Sincerely,

Eric Aasmundstad

Esie Commont

President

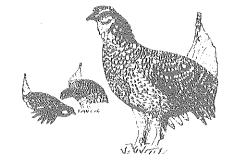


North Dakota Chapter

THE WILDLIFE SOCIETY

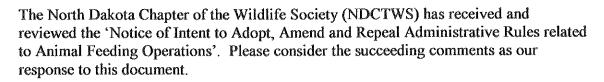
P.O. BOX 1442 • BISMARCK, ND 58502

April 8, 2004



North Dakota Department of Health Division of Water Quality 1200 Missouri Ave, P.O. Box 5520 Bismarck, ND 58506-5520 Attn: Dennis Fewless, Director, Division of Water Quality

Dear Director Fewless:



The North Dakota Department of Health should be commended for their efforts in revising the rules for control of pollution from Animal Feeding Operations (AFO's). Compared to the old rules, the new rules will significantly improve the protections of North Dakota's surface water sources. The major concerns of the NDCTWS are first, the wildlife-health impacts that may occur as a result of poor nutrient management, and second the degradation of wetlands that may result from agricultural waste system installment.

As AFO's continue to increase in North Dakota (especially in the northeastern part of the state) there will be more possibilities for runoff, spills, or discharges. Specifically, applying nutrients from these facilities on the landscape may impact wetlands and waterways that serve as important wildlife habitat. As a result, nutrient loading into a body of water may provide a suitable environment for the transmission and occurrence of disease in wildlife. Diseases and agents that may occur, specifically in water dependent migratory birds, include Salmonellosis, avian cholera, avian botulism, algal biotoxins, among others. It is imperative that nutrient management plans for AFO's be written so that manure applications are not being discharged into surface water sources. Further, vegetative buffers should be installed along all wetlands and watercourses within the impact area of an AFO to ensure that any runoff will be filtered. In addition, adjacent surface water sources should be regularly monitored by the ND Department of Health to ensure the biological integrity.

The new rules do not appear to address wetland conservation related to the construction and installment of agricultural waste systems. Currently, unless there is federal funding

involved, a wetland can be degraded or obliterated for the purpose of constructing an agricultural waste system without mitigation or compensation of the lost functions. The NDCTWS supports NEPA and the process of sequencing to uphold the 'no net loss of wetlands' policy. The Bush Administration recently (December of 2003) reiterated their commitment to upholding this policy as well, which should encouragement states to follow suit.

In summary, the NDCTWS would like to emphasize their support for implementing the new rules proposed by the ND Department of Health. Our concerns and recommendations described in this letter would further ensure the integrity of surface water systems, and certainly create a healthier environment for wildlife and humans. Thank you for the opportunity to comment on this important issue, and we look forward to continued communications with the ND Department of Health.

Sincerely, Pand When

Randy Renner, President

North Dakota Chapter of the Wildlife Society

COMMENTS SUBMITTED ON BEHALF OF ROGER AND JO ANN COPELAND 7383 67Th St NE Starkweather N.D. 58377

Dennis Fewless, Director North Dakota Department of Health Division of Water Quality 1200 Missouri Avenue P.O. Box 5520 Bismarck, ND 58506-5520

The following recommendations are to concerns we have with the current proposed regulations that the North Dakota Division of Water Quality has proposed in response to the new federal CAFO NPDES regulations released February 12, 2003.

The acres that are needed for applying the waste from the lagoon should be figured on the phosphorus bases to guarantee that the operator has sufficient acres to apply all the waste from the lagoon. If these acres are not owned by the owner of the hog operation, he should have to provide the State Health Dept. with a contract with the landowner to guarantee that these acres are available.

The setbacks from existing occupied dwellings are not sufficient for large operations. It should be a minimum of 3 miles.

The State Health Dept. should require a bond sufficient enough from the applicant to cover the cost of cleanup upon closure of the hog operation and any other environmental damage they may have caused ,keeping the inflation factor in mind.

Thank You for considering our concerns in this matter. Sincerely,

Roger & JoAnn Copeland

DISTRICT SUPERVISORS:

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April 8, 2004

ND Department of Health Dennis Fewless 2nd Floor Judicial Wing 600 East Boulevard Avenue Bismarck, ND 58505-0200

Dear Mr. Fewless,

We as the Emmons County Soil Conservation District Board wish to take this opportunity to thank you for allowing us to comment on your proposed rule changes pertaining to animal feeding operations. After looking over the proposed rule changes, we have found some rules that cause concern. With the increased regulations on AFO's, we find it troubling to our producers that clearer boundaries are not drawn as to who will be required to have a permit. We feel the new proposal leaves too much judgmental control to the Health Dept as to being in compliance, and what may be required to get in compliance. We also find the regulations pertaining to monitoring wells for ground water contaminants to be overkill as long as the producer meets the pond liner requirements. Once the producer puts forth the effort to meet Health Dept regulations, they should no longer have to worry about non compliance issues relating to their permitted system. This again gets into too much judgmental control.

Our board does not feel that residents who do not live near the lot or who are not negatively impacted by the feedlot, be allowed to file a complaint. Complaints should be made available to the producer along with the person making the complaint. We as a board also feels minimizing visual impacts should be taken out of the proposal, as it has no correlation as to the intent of the regulations; control of surface runoff. Our final concern is with your regulatory use of blue line streams on a topography map as it pertains to the distance a feedlot is located from waters of the state. We feel only the solid blue lines on a topography map should be used for measuring distance to a feedlot, not the dashed blue line. These solid blue lines are the only waterways that hold water throughout the year. Dashed blue lines only have water running during spring thaw and heavy rain events. We therefore feel that runoff from feedlots will go through a filtering effect while traveling in a dashed blue line stream, as they are vegetated year long.

The comments above are thought to be most beneficial as to helping the producers in Emmons County understand and comply with the new regulations. The Emmons County Soil Conservation Board thanks you again for allowing us to provide input for the new regulation changes affecting our producers.

Sincerel

Jim Vander Vorst, Chairman

Emmons County Soil Conservation District Board

April 12, 2004

North Dakota Department of Health Dennis Fewless, Director 1200 Missouri Avenue P.O. Box 5520 Bismarck, ND

Below are comments reguarding the proposed rules on CONTROL OF POLLUTION FROM ANIMAL FEEDING OPERATIONS (1/16/04).

Sec. 33-16-03.1-02 P. 1: Why is this document limited, in both scope and purpose, to maintaining beneficial uses of and preventing degradation of quality of the waters of the state? What about air quality?

Sec. 33-16-03.1-03 Definitions #3, P. 2: Why are the best management practices defined to only protect water quality? What about water quantity? What about degradation of soils from excess nutrients? What about air quality? Isn't North Dakota responsible for enforcing the Clean Air Act?

Sec. 33-16-03.1-03 Definitions #4, P. 3: Why are two operations under common ownership considered one for purposes of AUM's only if their facilities are adjoining or if they utilize a common area or system for waste disposal? What if only a road divides their facilities? What if the facilities are in different townships, counties, states or countries? The larger the number of animals in one area, whatever the ownership is, and whatever the political jurisdiction is, the larger the pollution potential will be. All facilities in a given area should be taken into account when permitting, monitoring, and siting, an operation, no matter what the political jurisdiction.

Sec. 33-16-03.1-03 Definitions #13, P. 5: Why does the definition of manure or livestock manure include a vague phrase ("and raw or other materials") which is open for interpretation? By this definition, manure could include parts of or whole carcasses, garbage of any form, and leftover antibiotics or antibiotic-laden feed.

Sec. 33-16-03.1-03 Definitions #20, P. 7: Where are the full requirements for a nutrient management plan to be found? Certainly the ND Department of Health has limitations for nutrient application, nutrient testing requirements, and application timing regulations? Where are they?

- Sec. 33-16-03.1-03 Definitions #20, P. 7: Why is air pollution (including odors) only addressed in the nutrient management plan, when they are applicable to other parts of the operation? Where are the requirements for limiting air pollution (including odors) found?
- Sec. 33-16-03.1-03 Definitions #23, P. 8: Where are the full requirements for an Operations and Maintenance Plan? Who determines what is "sufficient to protect the environment and public health" from pollution and air pollution (including odors)? Who is responsible for monitoring and correcting problems from emergencies such as spills, discharges, or failure of a collection, storage, treatment, or transfer component?
- Sec. 33-16-03.1-03 Definitions #24, P. 8: Since when can a corporation own or control a farming operation in ND? Only corporations allowed under the North Dakota Corporate Farming Law shall be allowed.
- 33-16-03.1-07 Permit application content and procedures #4 f, P. 16: What sort of guarantee does the public have that waste will be spread at the proper rates if the applicant does not own and control all of the land necessary to spread wastes at current approved agronomic rates? If the applicant does not own **and operate** the entire acreage where manure will be spread, written documentation should be provided to the state indicating ownership of the number of acres available for spreading, the number of years contracted, type of waste to be spread, method of spreading, and the person who will apply the waste. This should be in the form of a notarized or other legally binding agreement between the landowner/operator and the facility should be provided to the ND Department of Health for each parcel where waste is to be spread, good for the life of the facility or the permit.
- 33-16-03.1-07 Permit application content and procedures #3 a, P. 17: Why does this not specifically include water quality monitoring, and who is to pay for any monitoring, testing, sampling at a facility or adjacent to a facility? What about groundwater testing/monitoring downgradient from a facticity? Who will do the monitoring, where are the raw results sent? Who will interpret the results of any studies? Where and when will the results of monitoring and tests be made available to the public? How long will monitoring continue?
- 33-16-03.1-07 Permit application content and procedures #3 a, P. 17: Certainly a hydraulic gradient study would be done before a facility is constructed, so test wells can be properly placed. Who will conduct a hydraulic gradient study of the site before test wells are installed, who will pay for the study, who will analyze the results, and will these results be available to the public for review?

- 33-16-03.1-07 Permit application content and procedures #6, P. 18: Why is a permit not reviewed each time a facility changes ownership? New ownership may change many of the ways a facility is run, and the permits should be reviewed at these times. Changes in livestock type, numbers, manure storage or water pollution control structures, and adding barns all have the potential to impact water and air pollution and well as local social and economic impacts; a new permit should be required when a facility changes ownership.
- 33-16-03.1-07 Permit application content and procedures #9, P. 18: Why are permits allowed to be transferred? A change of ownership often means changes of livestock type, numbers, manure storage or water pollution control structures, adding bards, and voiding of manure spreading agreements, all of which have the potential to significantly change a facility and its pollution potential. No permit should be allowed to be transferred; all newly purchased facilities should undergo the full permitting procedure.
- 33-16-03.1-07 Permit application content and procedures #10, P. 18: Why should each facility not have its own permit? A general permit should be reserved for **very small** operations only!
- 33-16-03.1-08 Facility Requirements #3, P. 19: Why does the ND Department of Health not want to see a facilities Nutrient Management Plan? Writing a plan just to file it with the operation does not encourage the production of a quality plan, nor does it give the ND Department of Health a chance to comment on its completeness, or to monitor if the plan is being followed. Facilities requirements should also be filed with any jurisdiction having zoning authority such as township, townships, and cities with extraterratorial authority.
- 33-16-03.1-08 Facility Requirements #3 a, P. 20: What sort of guarantee does the public have that waste will be spread at the proper rates if the applicant does not own and control all of the land necessary to spread wastes at current approved agronomic rates? If the applicant does not own **and operate** the entire acreage where manure will be spread, written documentation should be provided to the state indicating ownership of the number of acres available for spreading, the number of years contracted, type of waste to be spread, method of spreading, and the person who will apply the waste. A notarized or other legally binding agreement between the landowner/operator and the should be provided for each parcel where waste is to be spread; these agreements should be on file with the ND Department of Health.
- 33-16-03.1-08 Facility Requirements #3 a, P. 20: Why are soil nutrient tests not required for each parcel, each year, to assure that excess nutrients (especially phosphorus and nitrogen) do not build up in the soils? Where will manure be spread if excess nutrients are found to be building up in the soils?

- 33-16-03.1-08 Facility Requirements #4 b, P. 20: What types of manure can be applied to frozen ground, and under what circumstances can manure be safely applied to frozen ground? If the manure cannot be immediately incorporated into the soil, odors will become extreme and the chances of nutrient-laden runoff contaminating water increase.
- 33-16-03.1-08 Facility Requirements #6 b, P. 22: Who will scientifically design and implement the groundwater site assessment for manure storage structures? Who will pay for these studies? Who will interpret the results? Will the ND Department of Health see the results?
- 33-16-03.1-08 Facility Requirements #6 f, P. 23: Who will pay for additional design or monitoring, if required, by the ND Department of Health? Who will perform the studies? Who will interpret the results? Will the ND Department of Health see the results? Can the public view the results?
- 33-16-03.1-08 Facility Requirements #8, P. 24: What sort of guarantee does the ND Department of Health give nearby residents that the air quality will not be degraded? What sort of responsibility does the facility have to not reduce the value of nearby land and structures? How long does the facility need to make an effort to control odors? Are chemicals to reduce human olfactory sensitivity to be used? Will nearby residents be notified if sensitivity-reducing chemicals are being used?
- 33-16-03.1-08 Facility Requirements #10 a, P. 24: Who will design and install monitoring wells at a facility? Who will take samples? Who will analyze the results? Will the public and the ND Department of Health have access to the results? For how long will monitoring take place? Who will pay for these tests?
- 33-16-03.1-12 Prohibited Activities #3, P. 28-29: How "near" to surface water is it illegal to bury carcasses? "Near" is a very vague term.
- 33-16-03.1-13 Public Participation #1-3, P. 29-30: How does the ND Department of Health determine "if a significant degree of public interest exists" if there is not first an issue of public notice requesting comment? Public notice and comment should be available for all applications for both individual permits and general state animal feeding operation permits. Information should be made available in all of the available county newspapers, (dailies, weeklies, and general delivery papers) to assure that all residents know about the proposed facility and have an opportunity to comment. If a facility is on the border of, or near to, two townships/counties/states/or countries, all residents, on both sides of the border, should be notified. Residents and landowners within a certain radius (3 miles, for example) should be notified directly by mail and be given ample time to comment to the ND Department of Health.
- 33-16-03.1-13 Public Participation#1-3, P. 29-30: Who will pay for the public notices?

33-16-03.1-13 Public Participation #5, P. 30: Townships should receive notice as well as counties. If the facility is within 3 miles of another jurisdiction (county, state, township, city, country) the notification should be provided to that jurisdiction as well.

Other Comments:

Where are the requirements for a closure plan? Who is responsible for proper closure, including management of manure, final cleaning of buildings, and the emptying and proper disposal of manure from all manure storage structures? If a facility ceases operation, it should submit, prior to closure, a closure plan prepared by a registered Professional Engineer, including the following:

- -Closures may be postponed for a period of 12 months if the property is posted for sale, however pollution hazards must be corrected immediately.
- Manure storage structure closure shall include the removal of sludge in the facility and its proper, legal disposal.
- All wastes from the operation and its waste control system must be removed and disposed of in some manner which is legally permissible as soon as practical in order to promote and protect public health.
- If an operation is sold, and the new ownership has obtained the proper permits and will continue to operate the facility, closure shall not be required.

What sort of bonding requirements does the ND Department of Health have for Animal Feeding Operations? The public does not need to be responsible for the financial costs of clean-up of a facility.

What sort of requirements does the ND Department of Health have for Abandonment? Owners and operators of feedlots should have joint and several liability for clean-up, closure or remediation of abandoned feedlot sites, including cases of neglect. Abandoned live animals should be assessed for health by the State Veterinarian and costs of disposal should be assessed against the bond.

Who will monitor a site after a facility closes, and who will be responsible for the monitoring and its costs?

Who is responsible for siting animal feeding operations? Does the ND Department of Health have the option to turn down a site? What are some examples of poor sites?

What is the ND Department of Health definition of an "engineer"? Would not a registered professional engineer, or an agricultural engineer be better terminology?

Does the ND Department of Health check to make sure all applicable township and county permits are granted before finalizing its own permits?

Why are waste lagoon requirements, including construction, operation, and closure, not codified? By not codifying requirements, the North Dakota Department of Health is inviting abuse of the system.

Why are most of the "regulations" in the Design Manual instead of in the statute? In order to be effective, the State needs to insert within the regulatory language all the requirements within the Design Manual which are enforceable standards. To leave them solely in the Design Manual is leaving a loop hole where the standards could be changed to non-enforceable standards without having to go through a public rule-making hearing and allowing public comment.

I look forward to your complete responses to these questions and comments.

Sincerely,

Sue Leake

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Emerado, ND 58228

Sue Leake

(701) 594-4275



Bowman/Slope Soil Conservation District 1112nd Ave. NW P.O. Box 920 Bowman, ND 58623

Phone: (701) 523-3871 Ext. 3 Fax: (701) 523-5806

April 9, 2004

North Dakota Department of Health Division of Water Quality PO Box 5520 Bismarck, ND 58506-5520

To Whom It May Concern:

As a conservation agency, the Bowman-Slope Soil Conservation District recognizes the need to promote the protection and conservation of our district's natural resources including our water.

Regarding the updated rules relating to animal feeding operations, Chapter 33-16-01, we have the following comments:

- 1. We ask that the NDDH respect and acknowledge the large financial impact that a permitted system can have on a producer. And we ask that the most cost-effective and practical solution be considered to construct a permitted animal waste system.
- 2. We strongly support the "No potential to pollute" determination if a facility is not polluting or impacting water of the state.
- 3. We would like clarification and specific definition as to some of the vague language in the new rule, such as:
 - a. "potential to pollute", technically every operation and person has the potential to pollute, but are they?
 - b. "significant contributor" and "likely to cause" in designation of concentrated animal feeding operations, what is *significant and likely to cause*, the majority of the pollution, a specific numerical amount of pollution?
 - c. "animal wastes" does this include wildlife?
- 4. It is important that the NDDH have exact proof, through water samples, that a specific operation is in-fact polluting water of the state before penalties or action is enforced. How many water samples will be taken to prove pollution or impacting? A one time, spring run-off sample that may show pollution may not prove that an operation is a "significant" contributor to the pollution.
- 5. Winter feeding operations are present on virtually every cattle operation in our district, therefore the designation of these operations as a CAFO will have a huge impact in our district. We again ask that a practical and common sense approach be taken in regard to winter feeding operations. We feel many of these operations can be improved through management and low-cost solutions to become permitted systems.
- 6. We strongly support the use and construction of water-spreading systems.

Water-spreading systems are a low-cost solution to contain "dirty" water from reaching water of the state and a way to utilize run-off and nutrients in forage/crop production.

7. "Complainers" should be required to make signed, written statements, not anonymous phone calls or letters. The producer referenced in the complaint

should receive copies of the written complaint.

Again, the Bowman-Slope Soil Conservation District recognizes the need to maintain and improve the water quality of our district, we also recognize the large impact these new regulations will have on our producers. Our producers are a natural resource too and need to be protected to be able to stay in the livestock business.

Sincerely,

Keven Heinrich by Comin Jonikowski Kevin Heinrich

Chairman, Bowman-Slope Soil Conservation District

cc: Senator Bill Bowman

Representative Keith Kempenich

Bowman/Slope Soil Conservation District Supervisors indial and a second control of the second and a second an

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